

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 036316-00

Adam P. Carey (deceased)	Employee
Richard A. Carey and Margaret L. Carey	Claimants
Kernwood Country Club	Employer
Eastern Casualty Insurance Company	Insurer

REVIEWING BOARD DECISION ON REMAND

(Judges Costigan, McCarthy and Fabricant¹)

APPEARANCES

Kevin T. Daly, Esq., for the claimants
Mark Sullivan, Esq., for the insurer at hearing
Carl F. Schmitt, Esq., for the insurer on appeal
Martin B. Schneider, Esq., for the employer

A single justice of the Appeals Court, while affirming in part and reversing in part the decision of the reviewing board, 18 Mass. Workers' Comp. Rep. 77 (2004), has remanded the issue of the attorney's fee award for reconsideration by the board.² The reviewing board, in reversing the decision of the administrative judge, determined that the claimants had prevailed in at least part of their claim.³ Accordingly, the board awarded claimants' counsel a fee of \$4,457.40, plus necessary expenses, pursuant to § 13A(5).⁴

¹ As two members of the original panel no longer serve on the reviewing board, the panel has been reconstituted.

² Adam P. Carey (deceased) v. Kernwood Country Club & another, Mass. App. Ct., Nos. 04-J-279 and 04-J-282, slip op. (August 1, 2005).

³ The insurer had accepted liability for the employee's death and paid the claimants § 33 burial expenses and § 31 benefits from the date of death for a period of seventy-six weeks, until what would have been their son's eighteenth birthday on March 2, 2002. The claim before the administrative judge sought, *inter alia*, further § 31 benefits up to the statutory maximum entitlement.

⁴ No fee was due pursuant to § 13A(6) because the claimants' appeal brought the case before the reviewing board.

Adam P. Carey (dec'd)
Board No. 036316-00

Because the decision of the single justice reverses that aspect of the reviewing board's decision in which the claimants prevailed, and reinstates the hearing decision of the administrative judge which denied the claimants' claim, the claimants have not prevailed, and we hereby vacate our award of an attorney's fee and necessary expenses under § 13A(5).

So ordered.

Patricia A. Costigan
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

Filed: **October 4, 2005**